

Retirement alert

DOL's best practices for missing participants

Retirement plan sponsors have long struggled to locate missing participants and beneficiaries. Increased Department of Labor (DOL) enforcement and an absence of fiduciary guidance has only exacerbated the problem. However, on Jan. 12, 2021, the DOL issued three-part guidance for retirement plan sponsors:

1. Outlining best practices to deal with missing participants
2. Explaining DOL enforcement policy
3. Explaining the PBGC missing participant program

Best practices for preventing & locating missing participants

The DOL provided a list of unrequired, but suggested, best practices. The DOL noted that these practices may not all be appropriate for each plan, but plan sponsors should review and implement changes where appropriate. Among the suggested practices:

- Maintain accurate census information for the plan's participant population:
 - Contact participants and beneficiaries periodically to confirm or update their contact information. Relevant contact information could include home and business addresses, telephone numbers (including cell phone numbers), social media contact information, and next of kin/emergency contact information.
 - Include contact information change requests in plan communications along with a reminder.
 - Flag undeliverable mail/email and uncashed checks for follow-up.
 - Maintain and monitor an online system that participants can use to update contact information.
 - Provide prompts for participants and beneficiaries to confirm contact information upon login to online platforms.
 - Regularly request updates to contact information for beneficiaries.
 - Regularly audit census information and correct data errors.
 - In the case of a change in record-keepers or a merger or acquisition, address the transfer of participant and beneficiary information and relevant employment records (e.g., next of kin information and emergency contacts).

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In fiscal year 2020 alone, DOL investigators helped missing and nonresponsive participants recover benefits in excess of \$1.4 billion.

Source: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20210112>



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- Implement effective communication strategies:
 - Use plain language and offer non-English language assistance.
 - State up front and prominently what the communication is about – e.g., eligibility to start payment of pension benefits, a request for updated contact information, etc.
 - Encourage contact through plan/plan sponsor websites and toll-free numbers.
 - Build steps into the onboarding and enrollment processes for new employees, and exit processes for separating or retiring employees, to confirm or update contact information.
 - Communicate how eligible employees can consolidate accounts from prior employer plans or rollover IRAs.
 - Clearly mark envelopes and correspondence with the original plan or sponsor name for participants who separated before the plan or sponsor name changed.
- Search for missing participants:
 - Check other employer sponsored benefit plans and employer records for participant, beneficiary and next of kin/emergency contact information. If there are privacy concerns, request that the employer or other plan fiduciary forward a letter from the plan to the missing participant or beneficiary.
 - Check with plan beneficiaries and the employee’s emergency contacts for updated contact information. If there are privacy concerns, ask the designated beneficiary or emergency contact to forward a letter to the missing participant or beneficiary.
 - Use free online search engines, public record databases (such as those for licenses, mortgages and real estate taxes), obituaries and social media to locate individuals.
 - Use a commercial locator service, a credit-reporting agency, or a proprietary internet search tool to locate individuals.
- Attempt contact via United States Postal Service (USPS) certified mail, or private delivery service with similar tracking features if less expensive than USPS certified mail, to the last known mailing address.
- Attempt contact via other available means such as email addresses, telephone and text numbers, and social media.
- If participants are nonresponsive over time, use death searches (e.g., Social Security Death Index) as a check and, to the extent such search confirms a participant’s death, redirecting communications to beneficiaries.
- Reach out to the colleagues of missing participants by, for example, contacting employees who worked in the same office or by publishing a list of “missing” participants on the company’s intranet, in email notices to existing employees, or in communications with other retirees who are already receiving benefits.
- Register missing participants on public and private pension registries with privacy and cybersecurity protections (e.g., National Registry of Unclaimed Retirement Benefits) and publicize the registry through emails, newsletters and other communications to existing employees.
- Document procedures and actions:
 - Put the plan’s policies and procedures in writing to ensure they are clear and result in consistent practices.
 - Document key decisions and the steps and actions taken to implement the policies.
 - For plans that use third-party record-keepers to maintain plan records and handle participant communications, ensure the record-keeper is performing agreed-upon services, and work with the record-keeper to identify and correct shortcomings in the plan’s record-keeping and communication practices, including establishing procedures to obtain relevant information held by the employer.

Insight into DOL's enforcement program

The DOL also provided insight into its Terminated Vested Participants Project (TVPP) audit program. The TVPP focuses on defined benefit plans that have indications of problems with missing participants and paying benefits. The DOL identified certain red flags as primary indicators of inadequate procedures:

- Missing and incomplete data in census records.
- Uncashed checks or returned mail.
- A significant number of terminated vested participants who are eligible for, but have not claimed, benefits (e.g., individuals over normal retirement or required minimum distribution [RMD] age).
- Using bad addresses without taking steps to verify the correct address.
- Benefit statements that do not clearly advise of the participant's vested status, the date at which they are eligible to start receiving benefits, or excise tax consequences of delaying commencement beyond the RMD requirements.
- Confusing or unclear communications or failures to include predecessor employer or predecessor plan names (e.g., after mergers or acquisitions).

Using the PBGC missing participants program

The DOL also issued an accompanying Field Assistance Bulletin saying it will not pursue violations against plan fiduciaries if they transfer accounts of missing or nonresponsive participants in terminating defined contribution plans to the Pension Benefit Guaranty Corporation (PBGC) rather than to an IRA, bank account or to a state unclaimed property fund. The relief is also available for the transfer of checks that have been uncashed for a certain period. However, the DOL expects plan fiduciaries to diligently search for participants and beneficiaries before sending account balances to the PBGC and could pursue ERISA violations for plan fiduciaries who fail to do so.

Action steps

Missing participants have been a lingering problem, but in the absence of any specific DOL guidance, plan sponsors have been left guessing as to the extent of their fiduciary duties. While few plans can afford to meet all of these best practices, the DOL acknowledges that not every practice is appropriate for every plan. Some of the best practices, particularly those suggesting using social media accounts or contacting other employees, may raise privacy concerns that a plan sponsor is unwilling to navigate. Plans should set aside time with their service providers to review plan data and procedures and discuss the need to change existing practices in light of the DOL's best practices. Plans should consider what practices will yield the best results in a cost-effective manner for their particular participant population. If you have any questions, please contact your Lockton Retirement Services Team.

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